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Security Council

Sixty-fourth year

Provisional

6135th meeting

Friday, 5 June 2009, 10 a.m.
New York

President:	Mr. Ilkin	(Turkey)
Members:	Austria	Mr. Mayr-Harting
	Burkina Faso	Mr. Kafando
	China	Mr. Liu Zhenmin
	Costa Rica	Mr. Urbina
	Croatia	Mr. Vilović
	France	Mr. Ripert
	Japan	Mr. Takasu
	Libyan Arab Jamahiriya	Mr. Dabbashi
	Mexico	Mr. Heller
	Russian Federation	Mr. Rogachev
	Uganda	Mr. Mugoya
	United Kingdom of Great Britain and Northern Ireland	Mr. Parham
	United States of America	Ms. Rice
	Viet Nam	Mr. Hoang Chi Trung

Agenda

Reports of the Secretary-General on the Sudan

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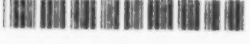

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The meeting was called to order at 10.15 a.m.

Adoption of the agenda

The agenda was adopted.

Reports of the Secretary-General on the Sudan

The President: In accordance with the understanding reached in the Council's prior consultations, I shall take it that the Security Council agrees to extend an invitation under rule 39 of its provisional rules of procedure to Mr. Luis Moreno-Ocampo, Prosecutor of the International Criminal Court.

It is so decided.

I invite Mr. Moreno-Ocampo to take a seat at the Council table.

The Security Council will now begin its consideration of the item on its agenda. The Security Council is meeting in accordance with the understanding reached in its prior consultations.

At this meeting, the Security Council will hear a briefing by Mr. Luis Moreno-Ocampo, Prosecutor of the International Criminal Court, whom I welcome. I now give him the floor.

Mr. Moreno-Ocampo: Mr. President, I thank you for inviting me to brief the Council today. In March 2005, through resolution 1593 (2005), the Council referred the situation in Darfur since 1 July 2002 to the Prosecutor of the International Criminal Court. For two months, my Office assessed the allegations of massive crimes committed in Darfur and the existence of national proceedings in relation to them. Since there were no such proceedings, I decided, as Prosecutor to open an investigation in June 2005.

Under the Rome Statute, the policy of my Office is to investigate and prosecute, in accordance with the evidence collected, those most responsible for the gravest crimes under our jurisdiction. This is what we did in the Darfur situation.

We collected evidence impartially for two years, relying on information provided by many actors, including the Government of the Sudan, and on the testimonies of more than 130 witnesses. We took those testimonies in more than 18 countries and devoted a great deal of effort to ensuring the protection of witnesses.

In our first case, we investigated the massive killings, rapes and torture of civilians in their villages during the period 2003-2005, which led to the displacement of four million civilians. The evidence revealed the role of the Minister of State for the Interior, Ahmed Haroun, as the coordinator of massive crimes against civilians not participating in the conflict, and the role of Janjaweed militia leader, Ali Kushayb, in specific attacks.

In our second case, we covered the same massive crimes against villagers and the continuing crimes being committed against displaced persons in the camps. The evidence showed the role played by President Omar Al-Bashir, beginning in 2003, when he ordered the operations against civilians in the villages, through 2005, when he appointed Ahmed Haroun as the Minister of State for Humanitarian Affairs and organized the process of strangulation of the displaced communities, denying them any meaningful assistance, preventing their return, forcing the United Nations and others to set up the largest humanitarian operation in the world and yet obstructing each step of their work.

On 4 March 2009, Pre-Trial Chamber I issued an arrest warrant for five counts of crimes against humanity, including extermination, rapes and killings, and two counts of war crimes against President Omar Al-Bashir. By a two to one vote, the Judges rejected the three genocide charges at this stage. The Office has appealed, and the Pre-Trial Chamber has yet to decide to grant leave to appeal on this topic.

The Judges' decision on 4 March has clarified the type of crimes committed in Darfur against the displaced persons in the camps. While the peacekeepers monitor fighting between parties to the conflict and the humanitarian workers monitor the physical plight of the civilians, the International Criminal Court monitors individual behaviour that can constitute crimes within our jurisdiction.

The intentional infliction of conditions of life in the camps, where the Sudanese State apparatus controlled by President Al-Bashir does not provide assistance and is obstructing the provision of assistance, and the multiple rapes of women leading to physical or mental harm, are both crimes within the jurisdiction of the International Criminal Court.

The Judges have retained the charge of extermination as a crime against humanity.

Under paragraph 2(b) of article 7 of the Rome Statute, extermination includes "the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population". That provision mirrors those of article 6 of the Statute, on genocide, which establishes that causing serious bodily or mental harm to members of a group and deliberately inflicting on that group conditions of life calculated to bring about its physical destruction, in whole or in part, can constitute genocide. The only difference between extermination and genocide is the latter's requirement that an intention to eliminate a specific group be demonstrated, in this case the Fur, Massalit and Zaghawa. Extermination has been happening since at least 2004, and it is happening today. Extermination is happening, with 2.5 million victims so far. Extermination is happening before the eyes of the international community.

We have also investigated and prosecuted attacks against peacekeepers. The attack on Haskanita in September 2007, which caused the deaths of 12 African Union peacekeepers and left thousands of people without protection, was the most serious of all the attacks against peacekeepers in the region.

On 7 May 2009, Pre-Trial Chamber I issued a first summons for Bahar Idriss Abu Garda, President of the United Resistance Front, to appear in relation to the Haskanita crimes. He appeared in court in The Hague on 18 May 2009. Let me thank those countries that have facilitated investigative missions of my Office and have helped to protect victims and witnesses and to facilitate the initial appearance of the first individual to have agreed to appear voluntarily before the Court, among them Gambia, Mali, the Netherlands, Nigeria and Senegal.

Those are the cases currently being prosecuted by the Court. The Court has investigated the crimes committed in Darfur over the past 6 years. We have identified the persons most responsible for the most serious crimes committed in Darfur. That is our judicial mandate, our contribution to stopping the crimes and preventing future crimes.

We have identified six individuals to be prosecuted. Three arrest warrants and one summons have been issued. The Judges' decision on two remaining individuals in the Haskanita case is pending. There is no sealed decision or other case pending at this stage.

As I mentioned in previous briefings, the list of 51 names prepared by the United Nations International Commission of Inquiry for Darfur is not used by my Office.

As I have done in the past, I would like to inform the Security Council of the next activities of my Office. I will be precise in order to facilitate the planning of other actors involved.

The judicial process is going ahead. The hearing for the confirmation of the charges against Bahar Idriss Abu Garda in the Haskanita case is scheduled for 12 October in The Hague. It will require the appearance of very few witnesses. The rebel groups have to facilitate the appearance of the other two commanders. They have committed to do so. They must now act.

The arrest warrant concerning President Al-Bashir has been sent to the Sudanese authorities. The Government of the Sudan has the responsibility to arrest him. Their legal obligation stems from the United Nations Charter and resolution 1593 (2005).

International experience, such as in the cases of Slobodan Milošević and Charles Taylor, as well as national experiences, indicate to us that the implementation of a judicial decision against a head of State is a process that can take time — months or years. In the end, however, they have all faced justice.

The Government of the Sudan also has the duty to arrest Ahmed Haroun and Ali Kushayb. The designation of Ahmed Haroun as Governor of South Kordofan contravenes the resolutions of the Security Council. He has to be arrested and sent to The Hague.

The arrest of persons sought by the Court is a process. It is first and foremost the responsibility of the Government of the Sudan. By resolution 1593 (2005), the Council established the duty of the Government of the Sudan to cooperate with the Court. Three year later, in June 2008, the Council confirmed its decision in the presidential statement published as document S/PRST/2008/21. In July 2008, a few days after my Office submitted to the Judges an application for an arrest warrant against President Omer Al-Bashir, the Council also adopted resolution 1828 (2008), which again emphasized the need to bring to justice the perpetrators of such crimes and urged the Government

of the Sudan to comply with its obligations in that respect. Those resolutions, as well as the presidential statement, establish a clear framework.

States parties to the Rome Statute have the responsibility to arrest and surrender any indictee travelling to its territory. There is no immunity under the Rome Statute. States parties have taken a number of initiatives in that regard. Some have publicly reasserted their obligations, should indictees elect to travel in their territory. States not parties to the Statute have no such legal obligation, but resolution 1593 (2005) urges them to cooperate fully with the Court. They can help the process of justice and deter new crimes by consistently raising with the Sudanese authorities their duty to respect Security Council resolutions and the ensuing decisions of the Court.

With regard to complementarity, I can confirm that, as of now, there are no national proceedings in the Sudan in relation to the massive crimes investigated by the Court. The most recent report of the Government of the Sudan circulated to the African Union and the United Nations on 2 February of this year indicated no new developments in that regard. Over the past six years, the Sudan has tried and completed only seven cases, from the dockets of the ordinary courts, and with no connection with the campaign of crimes coordinated by Ahmed Haroun, perpetrated by Ali Kushayb and others and ordered by President Omar Al-Bashir.

In the coming six months, in accordance with its mandate, my Office will continue to monitor crimes and galvanize efforts to arrest fugitives.

Let me be clear: I do not plan to open a new investigation during the coming six months, but I will continue to review new information on ongoing crimes. The focus will be on, inter alia, first, any new decision affecting the displaced persons, in particular the role played by the Humanitarian Aid Commission; secondly, the spillover of violence from Darfur into Chad and information related to acts against civilians promoted by the Ministry of Defence of the Sudan and others; and thirdly, the use of child soldiers by various parties, including some rebel movements. I have prosecuted the crime of the recruitment of child soldiers in the *Lubanga* case in the situation of the Democratic Republic of the Congo. It is a crime with a terrible impact on victims, their communities and their futures. It destroys generations.

Finally, it is a main objective of my Office in the months to come to build upon its cooperation with regional organizations as provided for in resolution 1593 (2005).

I visited Doha this past week upon the invitation of Prime Minister Al-Thani. He is leading Arab League and African Union efforts to mediate the conflict. I have seen the commitment of the Qatari authorities to ending the violence and promoting peace and the efforts invested by the international community to avoid further violence. The work of the African Union-United Nations mediation for Darfur is crucial to ensuring a comprehensive solution and security for the Darfuris now, and it is moving forward. A year ago, nobody would have dreamed that the peace process would progress so far. One year ago, there was no peace process. This past week, I saw real hope and commitment. My role is of a purely judicial nature, but I fully appreciate the importance of the wider political and security process taking place in Doha aimed at stopping the violence and preventing future crimes.

I am also liaising with the African Union high-level panel led by former President Thabo Mbeki, which has been mandated by the African Union to address in a mutually reinforcing manner the interlinked issues of combating impunity and promoting peace and reconciliation. As former President Mbeki stated at the panel's inauguration in Addis Ababa on 18 March 2009, the African Union has taken the clear and unequivocal decision that the continent must act not only to end war and violent conflict in Africa, but also to ensure that where war breaks out anyway, all belligerents must know that war crimes, crimes against humanity and other abuses will be punished resolutely and that a culture of impunity will not be permitted to take root and entrench itself.

I have had the opportunity to consult with former President Mbeki on several occasions, and we are planning to meet with him and the African Union high-level panel on Darfur.

I also had a productive phone conversation with African Union Commission Chairperson Jean Ping this week, on 3 June, and we are planning to meet in Addis Ababa.

The Arab League has been pushing successfully for the adoption of a criminal code in the Sudan that includes Rome Statute crimes. The other promises, including the investigation and prosecution of

individuals responsible for crimes, no matter what their level or rank, made by the Government of the Sudan to Secretary-General Amr Moussa this past July could, if fulfilled, help turn the tide in the situation in terms of impunity in Darfur.

Our efforts complement each other. The role of regional organization in promoting accountability and reconciliation at all levels for the Darfuris and in preventing future crimes is unique. In accordance with the Rome Statute, the International Criminal Court is a court of last resort, complementary to the national judiciary. We have six cases. Should regional organizations succeed in promoting national accountability mechanisms for the victims of other crimes, and stop new abuses, we would not need to intervene further.

Allow me to conclude. Resolution 1593 (2005) was one among various decisions taken by the Council to confront the violence in Darfur. Other resolutions of the Council address the need for a comprehensive political settlement in Darfur, for the protection afforded to Darfuris by peacekeepers and for the distribution of aid. All such aspects are key to ending the violence and the crimes in Darfur.

The International Criminal Court is fulfilling its judicial mandate to factually and legally describe the crimes committed and to prosecute its cases, respecting the law, respecting the victims and respecting the persons accused. The judges have issued decisions on those most responsible for the most serious crimes in Darfur. There will be no impunity in Darfur. Justice proceedings are in motion.

We are at a crossroads. The coming six months will be crucial. Most of the millions of victims of crimes have lived in the camps for four years. Young people are unable to move around. There is no education. There are no jobs. If girls and women go outside the camps, they are raped. If boys go outside, they are killed or, in some locations, abducted to fight. There is a generation of child soldiers in the making. There is a generation of victims faced with two options: they can leave the camps and die the same day or they can remain in the camps and die the day after.

Violence will bring no victory. For the sake of the Darfur civilians, all the parties to the conflict have to stop resorting to violence. This is the absolute priority, to prevent future crimes.

The President: I thank Mr. Moreno-Ocampo for his briefing. There are no further speakers inscribed on my list. The Security Council has thus concluded the present stage of it consideration of the item on its agenda.

The meeting rose at 10.45 a.m.